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**Transdev Services, Inc. and Amalgamated Transit Union Local 689, Associated with Amalgamated Transit Union, AFL–CIO.** Case 05–CA–195364

November 22, 2019

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on March 21, 2017,<sup>1</sup> by Amalgamated Transit Union Local 689, associated with Amalgamated Transit Union, AFL–CIO (the Union), the General Counsel issued the complaint on June 23, alleging that Transdev Services, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing and refusing to recognize and bargain with the Union following the Union’s certification in Case 05–RC–137335.<sup>2</sup> (Official notice is taken of the record in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and an amended answer, admitting in part and denying in part the allegations of the complaint and asserting affirmative defenses.

On July 10, the General Counsel filed a Motion for Summary Judgment. On June 19, 2019, the Board issued a Decision and Order granting the motion in part and denying the motion in part. *Transdev Services, Inc.*, 368 NLRB No. 12 (2019). The Board found that a genuine issue of material fact existed solely as to the Respondent’s denial that it received any of the Union’s three re-

quests to bargain and remanded the proceeding to the Regional Director for a hearing limited to that issue.

On August 19, 2019, the Respondent filed a second amended answer. The General Counsel filed a second Motion for Summary Judgment on August 23, and on September 19, 2019, the Board issued an Order Transferring the Proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In *Transdev Services, Inc.*, 368 NLRB No. 12 (2019), we granted summary judgment as to all representation issues in this case and found that all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.

Subsequent to that decision, the Respondent filed its second amended answer, which resolves the sole issue on which we initially denied summary judgment and remanded for hearing. The Respondent now admits Paragraphs 6(a)–(d) of the complaint, which allege that the Union requested, and that the Respondent failed and refused, to bargain with the Union as the exclusive collective-bargaining representative of the unit. As such, the Respondent’s second amended answer has eliminated the sole remaining issue of material fact. As the Respondent has not shown that newly discovered, relevant evidence is now available, we grant the General Counsel’s second Motion for Summary Judgment.<sup>3</sup>

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Hyattsville, Maryland, and has been engaged in the business of providing transportation services to private and governmental entities, including the Washington Metropolitan Area Transit Authority, also known as WMATA.

In conducting its operations during the 12-month period ending May 31, 2017, the Respondent derived gross revenues in excess of \$250,000 and purchased and received at its Hyattsville, Maryland facility goods valued

<sup>1</sup> All dates are 2017 unless otherwise indicated.

<sup>2</sup> After the Board issued its Decision on Review in *Veolia Transportation Services, Inc.*, 363 NLRB No. 188 (2016), the Respondent notified the Regional Office that its legal name had changed to Transdev Services, Inc., and the Regional Director issued a Supplemental Decision and Certification of Representative reflecting the change.

Members Kaplan and Emanuel did not participate in the representation proceeding.

<sup>3</sup> In its response to the Notice to Show Cause, the Respondent denies that it has failed and refused to bargain with the Union and contests the validity of the Union’s certification of representative on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the Board improperly included supervisory positions in the unit and therefore that the unit is inappropriate. We rejected those arguments in *Transdev Services, Inc.*, 368 NLRB No. 12 (2019).

in excess of \$5000 directly from points outside the State of Maryland.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

At all material times, Conrad F. Marshall has held the position of General Manager and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time road supervisors and lead road supervisors employed by the Employer at its facility currently located at 3201 Hubbard Road in Hyattsville, Maryland; excluding all other employees, guards, and supervisors, as defined in the Act.

Following the representation election held on July 1, 2016, the Board certified the Union as the exclusive collective-bargaining representative of the unit on July 19, 2016.

On October 31, 2016, the Board denied the Respondent's request for review of the Union's certification. The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

### B. *Refusal to Bargain*

About January 23 and March 1, by letter, and March 24, 2017, by email, the Union requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. The Respondent did not respond to the Union's requests. Since about January 23, 2017, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By failing and refusing since January 23, 2017, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair

labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

## ORDER

The National Labor Relations Board orders that the Respondent, Transdev Services, Inc., Hyattsville, Maryland, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Amalgamated Transit Union Local 689, associated with Amalgamated Transit Union, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time road supervisors and lead road supervisors employed by the Employer at its facility currently located at 3201 Hubbard Road in Hyattsville, Maryland; excluding all other employees, guards, and supervisors, as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Hyattsville, Maryland, copies of the at-

tached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 23, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 22, 2019

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Lauren McFerran, Member

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD  
APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Amalgamated Transit Union Local 689, associated with Amalgamated Transit Union, AFL-CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time road supervisors and lead road supervisors employed by the Employer at its facility currently located at 3201 Hubbard Road in Hyattsville, Maryland; excluding all other employees, guards, and supervisors, as defined in the Act.

TRANSDEV SERVICES, INC.

The Board's decision can be found at [www.nlr.gov/case/05-CA-195364](http://www.nlr.gov/case/05-CA-195364) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

